

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 12, 2003

**D039824      People v. Gonzalez**

The convictions of possessing methamphetamine for sale and transporting methamphetamine with a prior section 11378 conviction and prior prison term enhancement, and the sentence on those convictions and enhancements, are affirmed. The conviction of simple possession of methamphetamine is reversed. The trial court shall amend the abstract of judgment and advise the Department of Corrections of the amendment. Huffman, J.; We Concur: Kremer, P.J.; O'Rourke, J.

**D039956      LeBeau et al. v. Roxane Laboratories, Inc., et al.**

The judgments are affirmed. Respondents Scripps/Gormican and Merck are entitled to sanctions for appellants' frivolous appeal in an amount to be determined by the superior court. Appellants' request for sanctions against respondents Scripps/Gormican, Roxane, Merck and Pharmacia are denied. Huffman, J.; We Concur: Benke, Acting P.J., McConnell, J.

**D040606      Russel v. Hirota**

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J.; O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell  
Clerk: D. E. Moore

**D038973      People v. Harper**

Cause called on merits. Anthony J. Dain, Esq. argued for appellant. Marilyn George, Deputy Attorney General argued for respondent. Cause submitted.

**D040293      Coronadans Organized for Retail Enhancement et al. v. City for Coronado et al.**

Cause called on merits. Donald R. Worley, Esq. argued for appellant. James Patrick Lough, Esq. argued for respondent. Mr. Worley replied. Cause submitted.

**D037748      Contursi v. Sullivan Town & Country Hotel et al.**

Cause called on merits. Joseph James Rego, Esq. argued for appellant. Gregory William Poulos, Esq. argued for respondent, Groff and etc. Paul Carelli, Esq. was present in oral argument for respondent, Town & Country Hotel, and submitted on the briefs. Mr. Rego replied. Cause submitted.

Court recessed at 9:57 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Judith McConnell

**D037599      California Association of Retail Tobacconists, Inc., et al. v. State of California et al.**

Cause called on merits. Thomas Hiltachk, Esq. argued for appellant, Cigarettes Cheaper. Ira Bibbero, Esq. argued for appellant, California Association of Retail Tobacconists, and etc. William L. Carter, Esq. argued for respondent, Board of Equalization and etc. James Conrad Harrison, Esq. argued for respondent, Reiner. Mr. Hiltachk replied. Cause submitted.

Court recessed at 11:15 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 12, 2003 (continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald  
Clerk: D. E. Moore

**D041107        In re Kristen B., et al.**

Cause called on merits. Donna Kaiser, Esq. argued for appellant. Carl Fabian, Esq. argued for the children. David Casey, Deputy County Counsel argued for the respondent. Ms. Kaiser replied. Cause submitted.

**D040232        Austin v. San Diego City Employees' Retirement System**

Cause called on merits. Sheila M. Leone, Esq. argued for appellant. James J. Cunningham, Esq. was present in oral argument for respondent, and submitted on the briefs. Ms. Leone replied. Cause submitted.

**D039011        People v. Grayson**

Cause called on merits. Susan K. Keiser, Esq. argued for appellant. Andrew Mestman, Deputy Attorney General argued for respondent. Ms. Keiser replied. Cause submitted.

**D039163        Hogar Dulce Hogar v. Community Development Commission of the City of Escondido et al.**

Cause called on merits. Chatherine A. Rodman, Esq. argued for appellant/cross-respondent, Hogar. Michael M. Hogan, Esq. argued for respondent/cross appellant, Escondido Community Development Comm. and etc. Jennifer K. McCain, Esq. was present in oral argument with Mr. Hogan, but did not argue. Ms. Rodman replied. Mr. Hogan replied. Cause submitted.

Court recessed at 2:54 p.m. until Tuesday, May 13, 2003 at 9 a.m.

**D039393        People v. Togiailua**  
**D039395**

(Consolidated) The judgments are affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D038970        McGaw et al. v. County of Imperial et al.**

The judgment is affirmed. Respondents are entitled to costs on appeal. Aaron, J.; We Concur: Benke, J., McDonald, J.

**D039059        Iliff v. Dustrud**

Order modifying opinion and denying rehearing. (No change in judgment)

**D040359        People v. Taylor K.**

The order awarding \$1,070.50 in restitution to Stephen's mother is reversed. We remand to the trial court for further hearing to determine why the detective, counselor and social worker would not write letters and whether the attorney fees were incurred as a direct result of the crime. O'Rourke, J.; We Concur: Haller, Acting P.J., McConnell, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 12, 2003 (continued)

**D040909        People v. Quilon**

The conviction is affirmed. The dog-possession condition of probation is reversed and the matter is remanded for to allow the court to support, narrow or eliminate that condition of probation. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D041601        In re Curry on Habeas Corpus**  
**The petition is denied.**

**D040562        People v. Small**

Judgment affirmed. McDonald, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D040202        People v. Veliz**

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D041072        The Copley Press, Inc., et al. v. Superior Court of San Diego County/Westerfield**

The trial court order sealing the amount of public funds paid to attorneys for the defense of Westerfield is vacated. The trial court is directed to unseal the declarations and orders regarding the attendance of out-of-state witnesses after redacting information made confidential by sections 293 and 293.5 and Government Code section 6254, unless it makes the findings required to seal unprivileged materials. The petition is denied without prejudice to Copley's right to renew its request for access to transcripts of sidebar conferences, as provided in part III.C. of this opinion. In all other respects the petition is denied. The parties to this writ proceeding shall each bear their own costs incurred in this proceeding. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 13, 2003

**D039544        People v. Burroughs**

The judgment is affirmed, except that the rulings denying appellant section 2900.5 and section 4019 credits toward his prison term are reversed and the matter is remanded for further proceedings consistent with this opinion. CERTIFIED FOR PARTIAL PUBLICATION. McDonald, J.; I Concur: Benke, J., I Desent: Kremer P.J.

**D030862        In re Marriage of Stroup**

The order is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D041642        Richard S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

**D041734        Lorena P. v. Superior Court of San Diego County/San Diego County Health and Human services Agency**

The petition is denied. Huffman, Acting P.J., We Concur: Nares, J., McConnell, J.

**D041682        In re Scott on Habeas Corpus**

The petition is denied.

**D041641        Harris et al. v. Fire Insurance Exchange**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D039238        California Chiropractic Association v. American Specialty Health Plans, Inc., et al.**

The petition for rehearing/modification is denied.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke

Clerk: D. E. Moore

**D040624        People v. Collins**

Cause called on merits. Gary Nichols, Deputy Public Defender argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Mr. Nichols replied. Cause submitted.

**D040645        San Diego County Sheriffs Association v. Toyen**

Cause called on merits. Elizabeth Aronson, Esq. argued for appellant. Everett L. Bobbitt, Esq. argued for respondent. Ms. Aronson replied. Cause submitted.

**D038282        People v. Nasirichampang**

**D039798        In re Nasirichampang on Habeas Corpus**

Cause called on merits. Nicholas DePento, Esq. argued for appellant, Somchit. Patrick Morgan Ford, Esq. argued for appellant, Somphone. Lilia Garcia, Deputy Attorney General argued for respondent. Mr. DePento replied. Mr. Ford replied. Cause submitted as to appeal ONLY, D038282.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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MAY 13, 2003 (Continued)

Court recessed at 10:32 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

Clerk: D. E. Moore

**D040133        Trident Web Offset, Inc., et al. v. Employers Mutual Casualty Company**

Cause called on merits. Thomas W. Byron, Esq. argued for appellant. Robert V. Closson, Esq. argued for respondent. Mr. Byron replied. Cause submitted.

Court recessed at 1:53 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

**D040281        Battaglia v. Gere**

Cause called on merits. Edmund F. Farrell, Esq. argued for appellant. Russell Sterling Fuerst, Esq. argued for respondent. Mr. Farrell replied. Cause submitted.

**D041149        In re Junius B., a Juvenile**

Cause called on merits. Leslie A. Barry, Esq. argued for appellant. Carl Fabian, Esq. argued for the child. Catherine Bird, Deputy County Counsel argued for respondent. Cause submitted.

**D041144        In re Amadai B., a Juvenile**

Cause called on merits. Leslie A. Barry, Esq. argued for appellant, Maria C. Patti Dikes, Esq. argued for appellant, Pedro B. Christopher Blake, Esq. argued for the minor. Catherine Bird, Deputy County Counsel was present in oral argument for respondent. Ms. Barry replied. Cause submitted.

Court recessed at 2:52 p.m. until Wednesday, May 14, 2003 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 14, 2003

**D041684      In re Bell on Habeas Corpus**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

Clerk: D. E. Moore

**D039718      Shepherd v. The Dominion of Canada General Insurance Company**

Cause called on merits. Manuel Corrales, Jr., Esq. argued for appellant. Nancy Beattie, Esq. argued for respondent. Mr. Corrales replied. Cause submitted.

**D039355      Wilson et al. v. Bally Total Fitness Corporation, Inc., et al.**

Cause called on merits. Marita M. Lauinger, Esq. argued for appellant. Paul Coady, Esq. argued for respondent. Ms. Lauinger replied. Cause submitted.

Court recessed at 10:02 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

**D039445      Serena Community Association v. Brehm Communities, Inc., et al.**

Cause called on merits. Adrienne Cohen, Esq. argued for appellant. Judith Gold, Esq. argued for respondent. Ms. Cohen replied. Cause submitted.

Court recessed at 10:27 to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith McConnell

**D039084      People v. Coito**

Cause called on merits. Martha M. Hall, Esq. argued for appellant. Kevin Vienna, Deputy Attorney General argued for respondent. Ms. Hall replied. Cause submitted.

**D040390      Byars v. SCME Mortgage Brokers, Inc.**

Cause called on merits. Hart L. Robinovitch, Esq. argued for appellant. William Stern, Esq. argued for respondent. Mr. Robinovitch replied. Cause submitted.

Court recessed at 11:37 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. E. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 14, 2003 (Continued)

**D041044        In re Casey A., a Juvenile**

Cause called on merits. Neil Trop, Esq. argued for appellant. Lisa Maldonado, Deputy County Counsel argued for respondent. Andrea St. Julian, Esq. argued for minor. Mr. Trop replied. Cause submitted.

**D041167        Marron et al. v. Superior Court/Hassanein et al.-RPI**

Matter called on merits. Jon R. Williams, Esq. argued for petitioner. Jason Hill, Esq. argued for real party in interest. Mr. Williams replied. Louis G. Arnell, Esq. was present in oral argument for petitioner, but did not argue. Matter submitted.

Court recessed at 2:04 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

**D040790        Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board/7-Eleven, Inc.-RPI**

Matter called on merits. Chris Knudsen, Deputy Attorney General argued for petitioner. Ralph B. Saltsman, Esq. argued for respondent. Mr. Knudsen replied. Matter submitted.

**D041204        Evans v. Superior Court/People-RPI**

Matter called on merits. Jeff W. Carver, Esq. argued for petitioner. Kelly Rand, Deputy District Attorney argued for real party in interest. Mr. Carver replied. Matter submitted.

Court recessed at 3:09 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

**D039267        Loshonkohl v. Kinder**

Cause called on merits. Daniel Patrick Tokaji, Esq. argued for amicus appellant, ACLU. James Kinder in propria persona gave permission for Mr. Tokaji to cover the whole of his argument and gave leave for Mr. Tokaji to take his time. Dan Zeidman, Esq. argued for respondent. Mr. Tokaji replied. Cause submitted.

Court recessed at 3:38 p.m. until Thursday, May 15, 2003 at 9 a.m.

**D041836        Michael O. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Michael O. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D041476        Integrated Sign Associates, Inc. v. Billbro Construction Company**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal Rules of Court, rule 20(c)(2)). Each Party to bear own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 14, 2003 (Continued)

**D039946        Hutchinson et al. v. McCarty, et al.**

The judgment is affirmed. Respondents are entitled to costs on appeal. McDonald, J.;  
We Concur: Kremer, P.J., McIntyre, J.

**D039296        People v. Wolf**

The judgment is affirmed. Haller, J.; We Concur: Huffman, J., Nares, J.

**D039241        American Home Shield of California, Inc., et al. v. Fidelity National Home  
Warranty Company et al.**

The judgment is reversed insofar as it concerns the grant of Pelshaw's and Nelson's motions for summary adjudication of the breach of contract cause of action. After trial of this cause of action, the court must necessarily reconsider its award of attorney fees to Pelshaw and Nelson as prevailing parties on the contract. The postjudgment order is reversed insofar as it denies Fidelity costs of proof under Code of Civil Procedure section 2033, subdivision (o), and the matter is remanded for the trial court's exercise of discretion. In all other respects, the judgment and order are affirmed. McConnell, J.;  
We Concur: Kremer, P.J., Huffman, J.

**D040232        Austin v. San Diego City Employees' Retirement System**

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., McDonald, J.

**D038442        Corbisez et al. v. Wal-Mart Stores, Inc.**

The judgment is reversed. McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D041679        In re Kelly on Habeas Corpus**

The petition is denied.

**D039890        Residential Capital, LLC v. Premier Trust Deed Services, Inc., et al.**

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McConnell, J.

**D039894        Residential Capital, LLC v. Cal-Western Reconveyance Corp., et al.**

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.;  
We Concur: McDonald, J., McConnell, J.

**D042001        In re Arias on Habeas Corpus**

The petition is denied.

**D041741        Davidson v. Superior Court of San Diego County/Downey Savings & Loan  
Association et al.**

The petition is denied.

**D041753        In re Williams on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 15, 2003

**D040645        San Diego County Deputy Sheriffs' Association v. Toyen**

The order denying Toyen's special motion to strike is reversed. The matter is remanded to the trial court to determine whether DSA can establish there is a probability it will prevail on its claims. After making this determination, the trial court shall enter a new order granting or denying the motion to strike. Each party shall bear its own costs on appeal. Kremer, P.J.; We Concur: Benke, J., O'Rourke, J.

**D041292        In re Kimberly S., a Juvenile**

The findings, orders and judgment stemming from the jurisdiction and disposition hearing on December 2, 2002 are vacated. The trial court shall set a new jurisdiction and disposition hearing as the matter is remanded for the Agency to give notice to the Apache and Cherokee tribes and the BIA. If, after receiving notice, it is determined the child is not an Indian child, the court shall reinstate its original orders. O'Rourke; We Concur: Huffman, Acting P.J., Nares, J.

**D041596        B.Y. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petitions are denied. O'Rourke, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D042126        Vivacqua v. Superior Court of San Diego County/Pazmino**

The application for judicial notice is granted. The petition is denied in that there is no showing petitioner ever appeared specially in San Diego Superior Court seeking to dismiss or abate the California action based on the purported priority of the Arizona action.

**D041984        Ridener v. Superior Court of San Diego County/People**

The petition is denied. Petitioner has an adequate remedy by way of appeal.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre  
Clerk: D. E. Moore

**D039672        People v. Ross**

Cause called on merits. Amanda Doerrer, Esq. argued for appellant. Charles Ragland, Deputy Attorney General argued for respondent. Ms. Doerrer replied. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

**D040185        S., et al. v. S.**

Cause called on merits. Grace Schwartz argued on behalf of appellant in pro per. Cause submitted.

Court recessed at 9:30 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith McConnell

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
MAY 15, 2003 (Continued)

**D041626        Amber D. v. Superior Court**

Cause called on merits. Christopher R. Booth, Esq. argued for petitioner. Caitlin Rae, Deputy County Counsel argued for respondent. Cause submitted.

Court recessed at 9:54 a.m. until 1:00 p.m.

Court reconvened at 1:00 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell  
Clerk: D. E. Moore

**D038526        Mission Valley Partnership v. Sport Chalet, Inc., et al.**

Cause called on merits. Jacqueline S. Vinaccia, Esq. argued for appellant/cross-respondent, Concrete Images and Sport Chalet, Inc. Colleen Smith, Esq. argued for appellant/cross-respondent, Earl Corporation. Earl H. Maas, Esq. argued for respondent/cross-appellant, Mission Valley Partnership. Ms. Vinaccia replied. Ms. Smith replied. Cause submitted.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

**D039316        Derungs et al. v. Scripps Clinic et al.**

Cause called on merits. On Derungs appeal: Richard H. Benes, Esq. argued for appellant/cross-respondent, Derungs. S. Thomas Todd, Esq. argued for respondent/cross-appellant, Scripps Clinic. Mr. Benes replied. On Scripps Clinic appeal: S. Thomas Todd, Esq. argued. Richard H. Benes, Esq. argued. Mr. Todd replied. Cause submitted.

Court recessed at 2:35 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

**D040349        Correll v. Spurgeon**

Cause called on merits. Ronald W. Noya, Esq. argued for appellant. Stephen Temko, Esq. argued for respondent. Mr. Noya replied. Cause submitted.

**D039674        People v. Abarca et al.**

Cause called on merits. John R. Fielding, Jr., Esq. argued for appellant, Guadarama. Christopher Blake, Esq. argued for appellant, Abarca. Laura Stilwell, Deputy Attorney General argued for respondent. Mr. Fielding replied. Cause submitted.

Court recessed at 3:31 p.m. until Friday, May 16, 2003 at 9 a.m.

**D041068        In re T. W., a Juvenile**

Affirmed. Kremer, P.J.; We Concur: Benke, J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald  
Clerk: D. E. Moore

**D039833        People v. Williamson**

Cause called on merits. Gisela Caldwell, Esq. argued for appellant. Robert Foster, Deputy Attorney General argued for respondent. Ms. Caldwell replied. Cause submitted.

**D041082)       Eric B. et al., Juveniles**

**D041411)       Eric B. et al., Juveniles**

Cause called on merits. Leslie A. Barry, Esq. argued for appellant mother. Christopher Blake, Esq. argued for the minor. Lisa Maldonado, Deputy County Counsel argued for the respondent. Ms. Barry replied. Mr. Blake replied. Cause submitted.

**D040243       People v. Rhodes**

Cause called on merits. Barbara K. Strickland, Esq. argued for appellant. Robert Foster, Deputy Attorney General argued for respondent. Ms. Strickland replied. Cause submitted.

**D041277       Holman v. Superior Court/City of San Diego-RPI**

Matter called on merits. David Niddrie, Esq. argued for petitioner. James Chapin, Deputy City Attorney argued for real party in interest. Mr. Niddrie replied. Matter submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke  
Clerk: D. E. Moore

**D040142       Cuatro Catellus v. Silverton Nachant Corporation**

Cause called on merits. Rory Wicks, Esq. argued for appellant. John D. Alessio, Esq. argued for respondent. Mr. Wicks replied. Cause submitted.

Court recessed at 1:46 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

**D039818       People v. Felix**

Cause called on merits. James E. Atkins, Deputy District Attorney argued for appellant. Laurel Nelson Smith, Esq. argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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MAY 16, 2003 (Continued)

Court recessed at 2:02 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

**D038362        Wearmouth et al. v. Imperial Lakes, Inc., et al.**

Cause called on merits. Jeffrey M. Garber, Esq. argued for appellant. Thomas Tosdal, Esq. argued for respondents, the 5 adult children. John Morris, Esq. argued for respondent, Wearmouth. Cause submitted.

**D040584        Windham at Carmel Mountain Ranch Association v. Superior Court/The Presley Companies et al.**

Matter called on merits. Luis E. Ventura, Esq. argued for petitioner. Keith D. Koeller, Esq. argued for real party in interest. Mr. Ventura replied. Matter submitted.

Court adjourned at 2:51 p.m.

**D040369        People v. Jones**

Judgment affirmed. Kremer, P.J.; We Concur: Benke, J., McConnell, J.

**D041994        In re Harbour on Habeas Corpus**

The petition for writ of habeas corpus was summarily denied on May 2, 2003. Petitioner seeks rehearing. A denial of a petition for writ of habeas corpus without issuance of an alternative writ or order to show cause is final immediately as to the issuing court. (Cal. Rules of Court, rule 24(b).) This court is now without jurisdiction. Relief must be sought in the California Supreme Court. The petition for rehearing is dismissed.

**D040836        People v. Kralj**

Judgment affirmed. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D040454        In re Renee M., a Juvenile**

The true finding for battery and the disposition order are affirmed but for failure to state credit for time served. The disposition order is reversed insofar as it does not award credit for time served. In all other respects the order is affirmed. The matter is remanded for determination of whether Renee was in a secured facility within section 726 while placed in the Girls' Rehabilitation Facility and the Diakonia Group Home entitled her to additional credit for time served. O'Rourke, J.; I Concur: Kremer, P.J., I Concur in the Result: Huffman, J.